



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 12/02/03

AGENDA ITEM 6

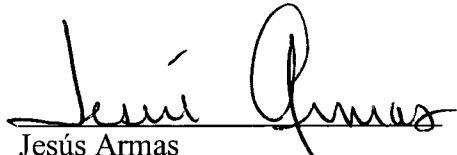
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Medical Marijuana Dispensaries

At its meeting of November 25, the Council voted to reconsider the issue of medical marijuana dispensaries. Attached is the report presented to you on November 18. The ordinance referenced in the November 18 agenda report is not attached, as that matter is no longer before the Council. For additional background information, pertinent portions of your minutes of the November 18 meeting are also attached.


Jesús Armas
City Manager



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 11/18/03

AGENDA ITEM 6

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Medical Marijuana

RECOMMENDATION:

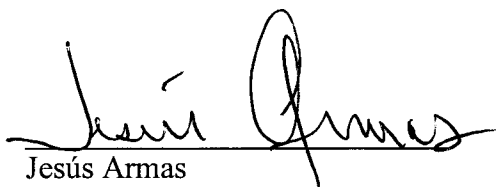
It is recommended that the City Council introduce the attached ordinance pertaining to medical marijuana, and grandfather the operation of Hayward Hempary and Local Patient's Cooperative.

DISCUSSION:

At the worksession of October 14, the Council was provided information with respect to the operation of medical marijuana dispensaries in Hayward, and the results of the work performed by the ad hoc task force to address this issue. The Council is referred to that report, a copy of which is attached, for background information.

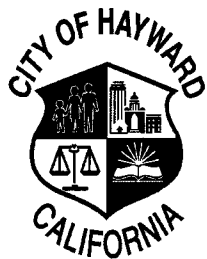
This evening, the Council is being asked to consider and address a couple of issues. The first concerns a proposed ordinance acknowledging that Hayward will recognize validly-issued identification cards when in the possession of qualified patients and caregivers. The ordinance largely mirrors recent amendments to state law resulting from the approval of Senate Bill 420. Under this legislation, identification cards are to be issued by county health departments pursuant to state regulations. As it may be some time before the enabling regulations are promulgated, the ordinance states that Hayward will recognize and accept identification cards issued in accordance with ordinances adopted by cities or counties as a valid form of identification. Once State regulations are in effect, this provision becomes moot.

The second issue before the Council centers on the number of distribution facilities to be allowed in Hayward. As noted at the worksession and in the report presented to you at that time, staff recommends that two facilities—the Hayward Hempary and the Local Patient's Cooperative—be allowed to continue to operate in accordance with the "ground rules" presented to you at the October worksession. (See Attachment B to the worksession report.) As previously reported, a third facility is seeking authorization to operate. It should be noted this facility opened subsequent to the development of the compromise position crafted by the ad hoc task force limiting to two the number of medical marijuana facilities in Hayward. Because of this, and because the person proposing to operate the facility was a member of the task force and therefore aware of the proposed limit, staff does not recommend allowing the third facility to operate.

A handwritten signature in black ink, appearing to read 'Jesús Armas', written over a horizontal line.

Jesús Armas
City Manager

Attachments



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 10/14/03

AGENDA ITEM _____

WORK SESSION ITEM WS #2

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Medicinal Marijuana

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND:

Earlier this year, the City received a land use application for permission to establish a facility in the downtown area to dispense marijuana for medicinal purposes. The applicant was advised such a use is not allowed under the City's zoning regulations. Subsequently, it became common knowledge that at least three such facilities were operating in Hayward: one on B St. and two on Foothill Blvd. Shortly thereafter, the Council received a request to establish an ad hoc task force to determine if and how such facilities might be allowed to continue. Eventually, the Mayor indicated she would establish such a task force, and the Council approved the use of staff resources in this regard. (Attachment A is a list of the individuals that participated in the task force.)

In comments submitted to the City, many expressed compassion for those using marijuana for medical purposes, likening it to any other instance in which medicine is used to alleviate pain. Some voiced concern that the number of dispensaries located in Hayward not proliferate. In a related observation, the Chamber and some retail establishments downtown expressed the view that having dispensaries on B St. runs counter to the numerous efforts currently underway to revitalize the downtown area. Others observed that the real problem lies in the conflict between State and Federal laws. While Proposition 215, approved by the voters in 1996, sanctioned the use of marijuana for medical purposes, the Federal Government does not recognize this authorization. This inconsistent treatment hinders the development of a satisfactory and fully acceptable solution to this matter.

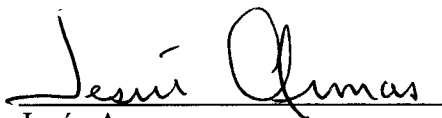
The task force met on at least two occasions. During the deliberations, it became clear that we are contending with two major issues. First, that individuals relying on marijuana to alleviate their pain or address a medical condition not be subject to arrest or other legal sanctions. A second issue focuses on how local governments contend with operators wishing to establish facilities to dispense marijuana. Available research indicates that to the extent local governments have dealt with the medicinal marijuana issue at all, most have dealt with the first issue, but sparingly with the second one. (It should be noted that although Proposition 215 was approved nearly ten years ago, the State has yet to promulgate regulations to implement it.)

One way local agencies have addressed the first issue is by developing a mechanism allowing for the issuance, on a voluntary basis, of identification cards for those possessing marijuana for legitimate, medical purposes. While possession of such cards does protect the individual from prosecution, it can be of assistance to local law enforcement personnel interacting with that person. I am advised that the counties of Marin and San Francisco have approved an I.D. card system, and Alameda approved its own system earlier this year. In the case of Alameda, the County may issue the card through its health department, or through a third party, should the County approve one.

On the issue of dispensaries, we were unable to find examples comparable to Hayward in terms of zoning regulations permitting such facilities. It may very well be that the conflict mentioned above between State and Federal law has resulted in most communities taking a wait and see attitude until the conflict is resolved.

The meetings of the task force were fruitful, and participants gained a better appreciation of the concerns and interests of the various parties. Because the dialogue was a constructive one, ultimately a compromise solution emerged which took into account the underlying objective of Proposition 215, while recognizing the fact there remains an ongoing conflict between Federal and State law. Essentially, this solution contains two major components. The first component asks the City Council to consider the development of an ordinance allowing for the issuance and acceptance of identification cards. The second element would allow for the two existing facilities on Foothill Blvd. to be "grandfathered", subject to adherence to certain conditions. (See Attachment B for a listing of the conditions.) During the meeting of the task force, the Chamber expressed strong objection to any facility being located on B St. However, at the meetings it was reported that the facility located on B Street was planning to move to another location in the County, making the matter of what to do with that facility moot. (Recently, it has come to our attention that although the B St. facility has closed, Ms. Jane Weirick has begun to dispense marijuana from her establishment on Foothill. From the staff perspective, we believe this is counter to the "compromise solution". Ms. Weirick believes it is consistent, contending that the objective of not having any dispensaries on B St. has been met and that the net number of facilities remains the same, with all of the facilities located on Foothill.)

The staff is seeking Council direction on whether an ordinance should be developed with regard to the issuance of identification cards. For your information, Attachment C is a copy of the ordinance adopted by the County, along with the related agenda report. If the Council supports preparation of an ordinance, staff suggests that it be modeled after the one adopted by the County. With regard to the facilities, if the approach herein is acceptable, staff would prepare letters of understanding to be executed with the operators of the dispensaries to assure compliance with the provisions as outlined in Attachment B.


Jesús Armas
City Manager

Attachments

ATTACHMENT A

Medicinal Marijuana Ad Hoc Task Force

Jeff Jones, Oakland Cannabis Buyers Cooperative

Shon Squier, Local Patient's Cooperative

Jane Weirick, Medical Cannabis Association

John Wichman, Westminster Hills Church

Chris Zaballos, Hayward Chamber of Commerce

City Participants

Roberta Cooper, Mayor

Jesús Armas, City Manager

Michael O'Toole, City Attorney

Maureen Conneely, Assistant City Attorney

OPERATING CONDITIONS FOR GRANDFATHERED
MEDICINAL MARIJUANA DISPENSARIES

1. The two existing Foothill dispensaries—Hayward Hempery and Local Patient's Cooperative—to be grandfathered and allowed to remain in operation, consistent with the items enumerated herein.
2. Operators must manage facilities to ensure they are safe and sanitary, and do not create a demand for police services.
3. Operators will actively discourage their patients/patrons from smoking or gathering in the sidewalk. Smoking on premises will be generally discouraged, except for extraordinary cases arising from physical necessity.
4. Operators will not advertise.
5. Operators will have no more than three pounds of marijuana on site at any one time.
6. Police personnel will periodically visit the facilities to confirm facility is safe and sanitary, and to verify that the quantity of marijuana on site does not exceed established limit.
7. If quantity is exceeded, or demand for police services is excessive, facilities will close within 30 days.
8. The facilities are grandfathered for three years, subsequent to which facilities must cease operation. If the conflict between federal and state law is resolved, the City will entertain amending the zoning ordinance to provide for the issuance of conditional use permits for marijuana dispensaries.

Residential (RSB6) to Planned Development (PD) Pursuant to Zone Change Application No. PL-2002-0722”

AYES: Council Members Jimenez, Hilson, Ward, Dowling,
Henson
MAYOR Cooper
NOES: Council Member Rodriguez
ABSENT: None
ABSTAIN: None

LEGISLATIVE BUSINESS

6. Consideration of Medical Marijuana Ordinance

Staff report submitted by City Manager Armas, dated November 18, 2003, was filed.

City Manager Armas reiterated the chronological steps that were involved. The City of Hayward has learned that a number of cities and counties have created guidelines for the identification of patients, very few have provided for facilities for the medical sale of marijuana. At present in Hayward there is legally no structure for the presence of the facilities, but many municipalities have created a system for them to be informally sanctioned. Here in Hayward, a Task Force was established and recommendations were made for consideration of this Ordinance. Since that time, a third facility has opened. The Task Force recommendation was to provide for essential identification and grandfather the two current facilities on Foothill Boulevard for three years or until the Federal Government takes further action on the issue. A third facility has opened. Staff asked for an ordinance adopting the recognition of patient identity cards and recognizing the two facilities on Foothill Boulevard, The Patient's Cooperative and Hempery.

Council Member Hilson asked how do we know the customers are under a doctor's care and what is the limitation on quantities dispensed to an individual.

City Manager Armas said we would not know. The ordinances that we have seen have a prerequisite that the identification card be issued only if the individual meets certain criteria, one of which is a recommendation from a medical doctor. The proposed ordinance would limit the amount allowed on the premises.

Council Member Henson noted that this does not address the actual use on the premises.

City Manager Armas responded that the ground rules are that smoking be prohibited on the premises except for extraordinary circumstances.

Council Member Henson then asked about going with the compromise of the task force for two dispensaries. He asked whether this was in reference to a corridor or the actual number of facilities.



**MINUTES OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, November 18, 2003, 8:00 p.m.**

City Manager Armas explained that there was one facility on the second floor of a building on B Street. However, the consensus was to not allow such businesses on "B" Street. However, during the process, the B Street facility stated that they would be moving to the county, which actually made the point moot. That enabled the compromise to be brought forward. Apparently the individual did not move and requested consideration of his store to be sanctioned as well.

Council Member Ward asked whether there were any other facilities in surrounding jurisdictions. He then discussed the possibility of a facility at A and Main Streets and asked how the City of Hayward would enforce this if such exists at that location.

City Manager Armas explained that enforcement would proceed with zoning regulations.

Council Member Ward said this establishment is calling itself a coffee shop. The presumption is that anything else that occurs would be a secondary use. He then asked about the identification card and whether there would be any requirement for the business owner.

City Manager Armas said it is a voluntary program. The two facilities would be expected to adhere to the ground rules addressed in the staff report.

Council Member Ward suggested that there might be categories of a variety of potency. How would the City of Hayward be able to determine the potency? He asked whether the City could require the establishments to obtain a business license under the category of pharmaceuticals.

City Manager Armas said that none of the regulations deal with this issue. He commented that a business license was applied for by one of the businesses. However, the full nature of the business was not disclosed. He then suggested that the two businesses, which would be grandfathered might be willing to cooperate.

Mayor Cooper opened the public hearing at 9:49 p.m.

Dr. Mike Alcalay said he thought there were three dispensaries, not two, to be eligible for a total of three years. He cited the recent legislation that legalizes medicinal marijuana. He recommended three dispensaries be approved.

Steph Sherer noted that she is with Americans For Safe Sales that represents 7,000 patients. She also spoke on allowing the third club dispensary, which is experienced in this effort.

Elizabeth Veloza also spoke in support of allowing three dispensaries.

Stacy Fernandez submitted a speaker card, but did not speak.

Curtis Hepner discussed the need for alternatives to pain medication. He asked that Council delay their action until further review.

Paul Baerwald said he was an employee of the dispensary on A Street. Many of the patients would not be comfortable going to another shop. He urged that the vote be delayed until a review of all the establishments is made.

Council Member Dowling asked him how long has he worked in this dispensary. Mr. Baerwald said since 1995 and he has been a lifelong resident of Hayward and recently moved to Castro Valley.

Jane Weirick explained her confusion since the Helping Hands thought the issue had been settled that they would be allowed to operate. She pleaded for support from Council Members and asked that they not deprive their patients of their caregivers. She submitted letters of support from patients and businesses.

Council Member Rodriguez asked Ms. Weirick how many patients they have. She said they have about 300 patients, which is normal for a cooperative their size. She also explained that the committee presented their recommendation to the Council.

Council Member Ward asked Ms. Weirick further questions.

She explained that the recommendation for two dispensaries was predicated with the move of the third out of the City.

Council Member Jimenez asked about the mile separation from a school facility. He noted that the two Foothill businesses are within one mile of the Bret Harte School.

City Manager Armas commented that the committee recommendation centered on the establishments in Hayward and did not need to address that issue.

Council Member Henson asked Ms. Weirick about the 300 patients that would be displaced due to her closure.

Ms. Weirick explained that the patients would not be happy with a change in dispensary. She reported that she owns the name Hayward Hempery. When the original business was sold, the new owner was required to change the name to the Hayward Patients Group. She commented that her first priority was to move the dispensary out of the Redevelopment Area.

Council Member Ward asked her about the training and the knowledge of those dispensing.

Ms. Weirick responded that she is a court-qualified expert because of her years of experience in the industry. As President of the Medical Cannabis Association, she said she would continue to work to provide the best operation.



**MINUTES OF THE CITY COUNCIL
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Tuesday, November 18, 2003, 8:00 p.m.**

William Panzer, an attorney and co-author of Prop 215, said the nearest dispensary to Hayward is in Oakland. He spoke on behalf of Jane Weirick. He referenced the City of Fairfax, which required 86 regulations. She was brought in to bring the dispensary into compliance. She has invested in a new technology. She cares about patients.

Janeen Dunbar, a former Helping Hands employee, said they worked without pay for over a month but would not abandon their patients.

Ryan Landers stated that he worked to develop SB 420. He stated that patients need choices and cannot be shifted from one dispensary to another.

Melody Gannon gave her time to Ed Rosenthal who noted that it is unconstitutional according to state law to limit the number of dispensaries. He said he felt that this is an ACLU issue. He noted that no one is talking about the potency or the weight of the product so there is no consumer protection in the Ordinance. He commented that this is basically an herb shop.

Victor Buxbaum said he was the massage therapist and yoga teacher at Jane's dispensary. He then asked that this Ordinance be held. The Clubs are performing a service to the community.

Council Member Henson asked for his reasons for a reconsideration of the Ordinance. Mr. Buxbaum said only that the number of clubs allowed to operate should include this club.

Tom Lemos, manager of the Hayward Patients Resource Center, spoke in support of Jane Weirick. He suggested the members go back and reconsider adding the third.

Ray Carlson emphatically spoke on behalf of accepting the third dispensary.

City Manager Armas clarified that the ordinance does not address the number of dispensaries. A second issue is the quantity of dispensaries.

Dustin Costa spoke about his concern with potency, strength and dosage. He said the City should be working on guidelines for compassionate caregivers, rather than ruling them out.

Alberto Lens said he was a survivor of cancer and lost more than forty pounds. He said nothing could stay in his stomach. He then smoked marijuana and was able to eat. He no longer uses it. He urged the three dispensaries remain.

Don Duncan, operator of a Berkeley dispensary, said he left the previous Council work session with the impression that no one called to close a dispensary. He reminded the Council that there was no discussion related to a two-dispensary limit. He said medical dispensaries could be operated in a safe, orderly and legal manner.

Council Member Ward said he visited two of the facilities.

Robin Few asked for reconsideration to have three clubs in the community.

Joshua John said he was disappointed that he had to return once again. He commended the Council for the identification cards. He commented on the strains that he needs and uses. He felt that one club was too dark and one club has stairs. Currently, he only frequents the club that is to be closed.

Ron Deziel said he expected to hear the ordinance regarding the identification cards under consideration to be discussed.

City Attorney O'Toole said both issues would be considered this evening by motion to grandfather two or three clubs on a three-year trial basis, as well as the introduction of the ordinance.

Mr. Deziel said this is about the Helping Hands dispensary. He noted that they were not dealing with nuisance operations, but service providers of medicine.

Robert Raich said three dispensaries are better than two and promote a greater choice. Having fewer dispensaries will increase back alley sales. He enumerated various scenarios.

Armando Soto, a cancer survivor, said he uses Berkeley cannabis clubs. He asked the Council not to view these clubs as nuisances. More clubs will help with the revitalization of the downtown.

Mayor Cooper closed the public hearing at 10:50 p.m.

Mayor Cooper commented that Hayward is a compassionate City. She suggested that other cities might be asked to do the same. The concern is that the City authorities do not want the DEA swooping down on the businesses in Hayward. Oakland is having a problem. She noted that her colleagues on the Council do care and have worked on this issue. Ms. Weirick was a party to the agreement of the Task Force for only two clubs in the City of Hayward.

Council Member Dowling thanked the Mayor for all of those who were on the Task Force. Hayward in general is compassionate. He said he thought he could make a proposal that would satisfy the Chamber of Commerce and others as well. He recommended changing the Clubs to include the Local Patients Cooperative and the Hayward Patients Resource Center. Both these clubs are run by experienced responsible individuals. Neither is in the downtown core nor on B Street. Then both centers can understand the City's concern. Hayward is picking up the slack for other cities. He proposed this as a motion. It was seconded by Council Members Henson and Rodriquez.

Council Member Ward offered a motion, which would support the staff recommendation as submitted by the Task Force. He noted that three is better than two and two is better than one, in terms of the Clubs. Council Member Ward then agreed to remove the dispensary part of his motion and consider only the Ordinance. This was seconded by Council Member Hilson.

Council Member Hilson stated that this Council was under no legal obligation to pass this Ordinance and has been involved with a myriad of efforts towards helping those in need and being



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Tuesday, November 18, 2003, 8:00 p.m.**

compassionate. This Council understands pain. It will be based on the spirit, and two dispensaries are what is the best thing for the City of Hayward. His constituents are overwhelmingly against this.

It was moved by Council Member Ward, seconded by Council Member Hilson, and unanimously carried to introduce the following:

Introduce Ordinance No. 03-___, "An Ordinance Adding Article 15 to Chapter 2 of the Hayward Municipal Code Relating to Control of Medical Marijuana"

Council Member Rodriquez said she understands people in pain. She said she supported Council Member Dowling's motion. Her advice was to resolve the issue of legalization. There would not be all the strong feelings in the discussions. She suggested the attorneys address these problems.

City Manager Armas clarified the two facilities being grandfathered: the Local Patients Cooperative and the Hayward Patients Resource Center.

It was moved by Council Member Dowling, seconded by Council Member Henson, and unanimously carried to approve grandfathering two facilities, the Local Patients Cooperative and the Hayward Patients Resource Center.

COUNCIL REPORTS

Council Member Hilson reported on the Conditions of Children Committee meeting he attended with the California First Five Coalition, as well as a recent League of California Cities board meeting and various actions they will be proposing to the Legislature and Governor with regard to funding for local municipalities.